



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 09 2012

Cedric Perry
Bureau of Land Management
California Desert District Office
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553-9046

Subject: Proposed Plan Amendment and Final Environmental Impact Statement/Final Environmental Impact Report for the Proposed Ocotillo Wind Energy Facility, Imperial County, California (CEQ #20120061)

Dear Mr. Perry:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement/Final Environmental Impact Report for the Proposed Ocotillo Wind Energy Facility, Imperial County, California. Our review and comments are provided pursuant to the National Environmental Policy Act, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement/Draft Environmental Impact Report and provided comments to the Bureau of Land Management on October 6, 2011. We rated the DEIS as *Environmental Concerns- Insufficient Information* (EC-2), primarily due to potential impacts to aquatic resources, as well as biological and cultural resources. We also expressed concern about the adequacy of the water supply analysis, potential impacts to groundwater resources, potential impacts to unique geologic features (desert pavement) and cumulative impacts. We asked for a final determination of the geographic extent of jurisdictional waters and demonstration of compliance with Clean Water Act Section 404. We also recommended that an Avian and Bat Protection Plan and Eagle Conservation Plan be included in the FEIS.

We appreciate the efforts of the BLM, the Applicant, and consultants to respond to our DEIS comments, and we commend the Applicant, State, and federal agencies for developing alternatives and additional, substantial mitigations that support environmentally preferable outcomes. In particular, we are pleased to note that the FEIS/FEIR contains a new preferred alternative, known as the Refined Project, to construct and operate 112 wind turbines, and additional information on water supply, confirming that water may be obtained from several sources. The FEIS/FEIR also includes the results of recent biological surveys and both the Avian and Bat Protection Plan and the Eagle Conservation Plan.

While recognizing the above improvements, the EPA has continuing concerns regarding impacts to water supply, unique geologic features, cultural resources, and biological resources. In particular, the EPA remains concerned that the availability and source of an adequate water supply is still in question and the impacts of the withdrawal of the water may not have been properly analyzed. The FEIS/FEIR states that the project will require approximately 50 acre feet per year, and that the water for the

construction of the project will be obtained from a well in the Pine Valley of eastern San Diego County; however, the FEIS also states that no permit modification would be required as long as the amount withdrawn is what had been exported historically (28 afy). We recommend that the Record of Decision explain how the additional water will be obtained, and from what source. We commend the applicant and the BLM for the commitment to not use water from the Ocotillo-Coyote Wells Sole Source Aquifer, and recommend that this commitment also be included in the ROD.

The EPA also remains concerned about potential impacts to desert pavement, a unique and sensitive geologic feature that is known to protect the underlying sand deposit from wind and water erosion, given BLM's decision that development of a plan for identification and avoidance or protection of desert pavement is unwarranted. We note that the BLM required the Sunrise Powerlink project, which crosses the proposed project site, to develop a Desert Pavement Protection Plan, specifically to identify desert pavement in that project's Right of Way and to develop methods to avoid or protect this fragile geologic feature. The EPA recommends the BLM reconsider the need for protection of desert pavement from development activities associated with the Ocotillo Wind Energy Project and consider the use of the Sunrise Powerlink Desert Pavement Protection Plan as a guide for a similar plan for the proposed Project.

The EPA notes the tribal outreach and consultation that the BLM and applicant have accomplished. We encourage the BLM to ensure, through continued consultation, that the extent and manner of the consultation is considered meaningful by the tribes. We recommend that the ROD clarify the relationship between the Memorandum of Agreement for this project and the programmatic agreement that has been developed by BLM and other agencies for tribal and cultural resources affected by projects primarily in the Desert Southwest. BLM should ensure that the project-specific Memorandum of Agreement under development will be finalized and signed prior to the ROD being signed.

The EPA recommends that the ROD, the Avian and Bat Protection Plan, and the Eagle Conservation Plan include a commitment by the BLM and the applicant to periodically (e.g., annually) evaluate the efficacy of other detection methods and protocols under development for other wind projects. Based on the results, and in consultation with the Fish and Wildlife Service, the BLM and the applicant should update and adapt their avian protection plans to incorporate technologies demonstrating greater effectiveness. Such technology reviews, and any resulting recommendations, should be made available to the public.

We understand that the current population of condors is not likely to occur in the proposed Project area. Nevertheless, we reiterate our recommendation that the BLM monitor the condor re-population efforts of the San Diego Zoo. Their goals include establishing 20 breeding pairs, in hopes that the Baja population will, in time, link to the central California populations. Given the requested 30-year ROW for operation of the proposed Project, the potential exists for condors to fly into this area during the Project's operations as the nearby condor population expands.

We recommend that the BLM address the above issues prior to making a final decision on the proposed Project. We also recommend that all mitigation measures, including specific criteria for successful mitigation, be adopted in the ROD and be included as conditions in construction contracts and any other approvals, as appropriate, to minimize adverse environmental impacts to the extent possible. If any mitigation measures in the FEIS/FEIR are not adopted, the ROD should provide justification for the

decision not to adopt them.

We are available to discuss all recommendations provided. Please send one hard copy and one CD ROM copy of the ROD to us when they are filed with our Washington D.C. office. If you have any questions, please contact me at 415-972-3521, or contact Scott Sysum, the lead reviewer for this project. Scott can be reached at 415-972-3742 or sysum.scott@epa.gov.

Sincerely,



For

Kathleen Martyn Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:

(1) Distribution List

cc: Distribution List

Distribution List

Heather Beeler
U.S. Fish and Wildlife
Service

Chairwoman Monique
LaChappa
Campo Band of Kumeyaay
Indians

Chairperson Sherry Cordova
Cocopah Indian Tribe

Chairman Robert Pinto, Sr.
Ewiiapaayp Band of
Kumayaay

Chairman Virgil Perez
Iipay Nation of Santa Ysabel

Chairwoman Rebecca Osuna
Inaja Band of Diegueno
Mission Indians of the Inaja
and Cosmit Reservation

Chairman Raymond Hunter
Jamul Indian Village

Chairperson Gwendolyn
Parada
La Posta Band of Mission
Indians

Chairman Leroy Elliott
Manzanita Band of the
Kumeyaay Nation

Chairperson Mark Romero
Mesa Grande Band of
Diegueno Mission Indians

President Keeny Escalanti
Quechan Indian Tribe

Chairman Allen Lawson
San Pasqual Band of
Diegueno Mission Indians
of California

Chairman Daniel Tucker
Sycuan Band of the
Kumeyaay Nation

Chairwoman Maxine
Resvaloso
Torres Martinez Desert
Cahuilla Indians

Chairperson Anthony Pico
Viejas (Baron Long) Group
of Capitan Grande Band Of
Mission Indians

Melisa Estes
Campo Band of Kumeyaay
Indians

Kevin Conrad
Cocopah Indian Tribe

Desiderio Vela
Ewiiapaayp Band of
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Melody Sees
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Mission Indians of the Inaja
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Jamul Indian Village

Javaughn Miller
La Posta Band of Mission
Indians

Marc Anderson
Manzanita Band of the
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Darrel Langley
Mesa Grande Band of
Diegueno Mission Indians

Chase Choate
Quechan Indian Tribe

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Kumeyaay Nation

Gerardo Bojorquez
Torres Martinez Desert
Cahuilla Indians

Donald Butz
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of Capitan Grande Band Of
Mission Indians